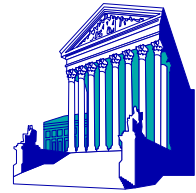




## **ARIZONA SUPREME COURT ORAL ARGUMENT CASE SUMMARY**



**ARIZONA SUPREME COURT  
ADMINISTRATIVE OFFICE OF THE COURTS  
1501 West Washington - Phoenix Arizona 85007- 3231  
Public Information Office: (602) 542-9310**

**No. CV-02-0020-CQ -**

*Mark Scheehle v. Justices of the Supreme Court of the State of Arizona: Stanley G. Feldman; Charles E. Jones; Frederick J. Martone; Ruth V. McGregor; and Thomas A. Zlaket; Judges of the Superior Court of the State of Arizona in and for the County of Maricopa: Michael McVey, Robert Myers, Jonathan Schwartz and Christopher Skelly,*

### **Parties and Counsel:**

Plaintiff/Appellant: Mark V. Scheehle by Dorothy and Mark Scheehle

Defendants/Appellees:

Justices of the Arizona Supreme Court and Judges of the Superior Court for Maricopa County Michael McVey, Robert Myers, Jonathan Schwartz and Christopher Skelly by Janet Napolitano and Patrick Irvine, Office of the Attorney General

### **Facts and Proceedings:**

Scheehle is a practicing tax attorney. In 1997, the Superior Court appointed him to act as an arbitrator pursuant to the Uniform Rules of Procedure for Arbitration, now Ariz. R. Civ. P. 73. He returned the file to the then presiding arbitration judge, Michael McVey, declining to serve, arguing the mandatory arbitration system was contrary to state and federal law. After holding hearings Judge McVey imposed a sanction on Scheehle for \$900 for refusing to serve.

Scheehle filed a petition for special action directly with the Arizona Supreme Court. *Scheehle v. McVey*, No. CV-98-0187-SA (filed March 31, 1998). Scheehle contended the arbitration rules violated A.R.S. § 12-133 because the statute provides service as an arbitrator should be voluntary while current Rule 73(b)(1) and Maricopa County Local Rule 3.10(b)(1) make service mandatory. He also argued the mandatory nature of the service amounted to involuntary servitude, an unconstitutional taking of property, violated the federal equal protection clause and was an illegal tax. The Supreme Court declined jurisdiction on June 2, 1998.

Scheehle then filed a federal lawsuit making many of the same claims he made in the special action. Count Seven of his first amended complaint alleged the rule is invalid because it conflicts with A.R.S. § 12-133. The district court granted defendants summary judgment on all federal constitutional claims, but declined to exercise its supplemental jurisdiction over the state law claim.

The Ninth Circuit initially affirmed in a published opinion. *Scheehle v. Justices*, 257 F.3d 1082 (9<sup>th</sup> Cir. 2001). The court did not decide whether the arbitration rules conflicted with 12-133, stating “the argument does not appear to state a cognizable federal issue.” *Id.*, 257 F.3d at 1084, n.1. The appellate panel then withdrew their opinion (*Scheehle v. Justices*, 269 F.3d 1127 (9<sup>th</sup> Cir. 2001)) and certified a question of law to the Arizona Supreme Court. The Arizona Supreme Court accepted the certified question and then recused itself from hearing the merits of the case. The Court appointed Hons. Edward Voss, Susan Ehrlich, Jefferson Lankford, John Gemmill and Thomas Cole to serve as Supreme Court Justices to answer the question.

**Question Certified:**

“Does A.R.S. § 12-133 authorize a system of compulsory participation of attorneys in the mandatory arbitration system?”

***This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office and the Administrative Office of the Courts solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.***

Monday, April 29, 2002